

CPNI and Consumer Privacy Frequently Asked Questions January 2011

The Public Is Very Concerned about Privacy

Consumers are increasingly wary about their privacy in today's environment where numerous entities collect and store personal information. Several high-profile news articles have highlighted consumer privacy, the unauthorized sale or use of consumers' phone records, wiretapping, and government monitoring of call records. Consumers want – and have the right – to be secure in the knowledge that their personal information is secure.

FCC Enforcement

In 1999, the Federal Communications Commission (FCC) enacted rules protecting the customer information gathered by local, long distance and wireless phone companies such as the phone numbers that a customer calls, when the calls are made, and the different services a customer uses. This information is referred to as Customer Proprietary Network Information (CPNI). The FCC is empowered to investigate consumer complaints about unauthorized or unlawful disclosure of customer information, and can issue citations and propose fines.

During late 2005 and early 2006, numerous media reports stated that some companies known as data brokers advertised the availability of records of telephone subscribers' incoming and outgoing telephone calls for a fee. Reports suggested that these data brokers tricked telecom carriers into giving up private data, or in some cases, were assisted by telecom employees who provided the data to data brokers. Often called "pretexting," these instances of theft of personal information caused an uproar in the media and in Congress.

The FCC's response was immediate and decisive:

1. On January 25, 2006, the FCC asked AT&T and other large carriers to produce their CPNI compliance certificates. AT&T Inc. delivered the compliance certificate of SBC but did not provide the certificate from the old AT&T Corp. The FCC then proposed a fine of \$100,000 against the "old AT&T" for failing to comply with CPNI rules requiring a company officer to certify yearly that it has privacy protections in place, and for inadequacies in its "opt-out procedures." In July, 2006, AT&T entered into a consent decree agreeing to make a voluntary payment of \$550,000 in return for the termination of the FCC investigation.
2. On January 30, 2006, the FCC proposed a \$100,000 fine against Alltel for failing to complete and keep on file the required compliance certificate. In response to the January 25th request, Alltel sent the FCC a statement

about how it secures customers' data, but did not submit the required certification statement. In August 2006, Alltel entered into a consent decree agreeing to make a voluntary payment of \$550,000 in return for the termination of the FCC investigation.

3. On January 30, 2006 (and again via an amended Notice on February 2, 2006), the FCC issued a public notice requiring each carrier to file their carrier compliance certificates for the most recent period, along with a copy of the internal CPNI policies by February 6, 2006.
4. On February 10, 2006, the FCC opened a Rulemaking Docket (CC Docket No. 96-115, RM-11277) to determine whether new or stronger rules may be necessary to protect customer information.

More recently, numerous Iowa companies have received letters from the FCC Enforcement Bureau seeking copies of the company's compliance certificates for the past five years. ITA spoke with an attorney with the FCC this week to gain additional insight into the purpose of these enforcement letters, and to determine what type of information the FCC is seeking. (See questions #4, #5, and #6 below for more on this).

Just this week, the U.S. Senate passed legislation making it a federal crime to obtain a person's telephone records without permission, otherwise known as pretexting.

In order to remind Iowa carriers of their responsibilities, ITA has compiled this overview and "Frequently Asked Questions" guide. This is not intended to provide legal guidance – if you have any questions on how the rules apply to your company, please contact your legal advisor.

General Overview of CPNI Rules

Telephone companies may only use, disclose, or permit access to customer information in the following circumstances: 1) as required by law; 2) with the customer's approval; or 3) in providing the service from which the customer information was obtained.

Any carrier desiring to use customer information to market products to specific customers that are not "enhancements to services the customer already uses" (see question #2), must have first obtained the customer's approval either verbally, in writing, or electronically using the "opt-in," "opt-out" or "one-time use" method. (See Question #9). Carriers must keep accurate records of customer approvals, and all instances where it disclosed or provided to third parties any customer information.

In addition, all companies must have in place procedures to protect the confidentiality of CPNI information, and each year, each company must have one of its officers certify that it has privacy protections in place and that the company is complying with its procedures.

Some of the CPNI rules apply to all companies. Some of the rules only apply if your company intends to use CPNI in its marketing efforts.

We have broken these FAQs into three sections – (1) CPNI regulations that apply to all companies, (2) Questions for carriers who do NOT use CPNI in their marketing, and (3) Questions for carriers who plan to use CPNI in their marketing campaigns.

CPNI Regulations that Apply to All Companies

Question #1: What is CPNI?

Answer: CPNI stands for customer proprietary network information that is collected and held by wireline or wireless telecommunications carriers. In practical terms, CPNI includes highly sensitive personal information such as the phone numbers called by a consumer, the frequency, duration and timing of such calls, and any services purchased by the consumer, such as call waiting. CPNI does not include subscriber list information.

Here's the actual definition of CPNI from Section 222(h)(1) of the 1996 Telecom Act:

- A) Information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and
- B) Information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier.

Question #2: Does a carrier always need approval to use a customer's information?

Answer: Not always. You may use a customer's information, without approval, to market enhancements to services the customer already uses. For example, if your customer purchases basic local telephone service she does not need your approval to use her customer information to market voice mail or caller ID services. Those are enhancements to services the customer already uses. On the other hand, if the customer subscribes to local and long distance, you would need the customer's approval to use her CPNI to sell her wireless service.

However, if the customer asks you to put her residential telephone number on your company-specific do-not-call list, you must do so, and then you it cannot even make the calls to enhance existing services.

Question#3: What duties do carriers have with CPNI?

Answer: Generally, every telecommunications carrier has a duty to protect the confidentiality of proprietary information of their customers.

Specifically, all carriers must obtain a customer's knowing consent before using or disclosing CPNI. If a carrier plans to disclose CPNI to third parties or affiliates that do not provide communications-related services, they must obtain affirmative, opt-in consent first.

Section 64.2009 of the FCC's rules has established six "safeguards" for the use of CPNI that apply to all telecommunications carriers:

1. Recordkeeping. You must implement a system by which the status of a customer's CPNI approval can be clearly established prior to the use of CPNI. For example, your software may indicate within the first few lines of the first screen whether or not the customer has given you approval to use his CPNI.
2. Training and Discipline. You must train your employees as to what CPNI is and when they are and are not authorized to use CPNI. You need to implement a specific disciplinary process to address what happens when an employee fails to follow CPNI rules and procedures.
3. Marketing Campaigns. You must maintain a record of your own and any affiliates' sales and marketing campaigns that use your customers' CPNI. All carriers must maintain a record of all instances where it disclosed CPNI or provided CPNI to third parties, or where third parties were allowed access to CPNI. These records must contain a description of each marketing campaign, the specific CPNI that was used in the campaign and what products and services were offered as part of the campaign. Carriers must retain these records for a minimum of one year.

4. Supervisory Review Process. You must require management approval of marketing campaigns that use CPNI and establish a supervisory review process regarding compliance with rules for those marketing campaigns and maintain records of such compliance for a minimum of one year.
5. Compliance Certificates. This is a two-part requirement. On an annual basis, your company must:
 - a. Have an officer sign a compliance certificate stating that the officer has personal knowledge that your company has established operating procedures that are adequate to ensure compliance with the rules.
 - b. Provide a statement accompanying the certificate explaining how your operating procedures ensure that you are in compliance with the rules.

You must make the annual compliance certificate and the accompanying statement available for public inspection. See Questions #4 and #5 and Appendices A and B for more on Compliance Certificates.

6. Notice to FCC When Opt-Out Mechanisms Don't Work Properly. If you discover or determine that your opt-out mechanisms do not work properly, to "such a degree that a consumer's inability to opt-out is more than an anomaly" you must notify the FCC by written letter within five business days. The letter needs to include your carrier name, a description of your opt-out mechanism, the problem(s) experienced, the remedy proposed, and when it will be or was implemented, whether you have notified the IUB and whether it has taken any action, a copy of the notice you sent to your customers, and your contact information.

Question #4: What needs to be contained in the "compliance certificate" and the "accompanying statement" required by FCC rule 64.2009(e)?

Answer: The compliance certificate must be signed by an officer, as an agent of the carrier on an annual basis. The compliance certificate must state that the officer has personal knowledge that the company has established operating procedures that are adequate to ensure compliance with the CPNI rules.

In addition to the brief compliance statement, each company must also prepare a "statement accompanying the certificate" explaining how your operating procedures ensure that you are in compliance with the rules. This statement explains to the FCC how your company complies with the CPNI rules. Information you should maintain in connection with your accompanying statement might include:

- The type and frequency of employee training on CPNI (including any records that were kept about the training, and whether the training was formal or verbal)
- The types of instructional or written materials given to employees

- A description of the supervisory process that comes to bear and the consequences that exist if an employee uses CPNI against company policy.
- Any personnel manual provisions that address confidentiality of customer information.
- How you instruct new employees about the need to keep CPNI confidential.

We have enclosed a sample compliance certificate in Appendix A. We have enclosed a sample “accompanying statement” for companies who do not use CPNI in Appendix B, and a sample for companies who do use CPNI in Appendix C.

Question #5: After the rushed filings of our Compliance Certificates that we made in February 2006, do we need to file an annual certification with the FCC?

Answer: NO. FCC’s rules do not require you to file the compliance certificate discussed in Question #3 and #4 on an annual basis with the FCC.

However, you are required to have an officer of your company sign a compliance certificate on an annual basis. You only need to keep that certificate on file, and make it available for public inspection, copying and/or printing at any time during regular business hours at a centrally located business office.

The FCC can ask to see your compliance certificates and accompanying statements at any time. This is what happened in February of 2006. Because telecommunications carriers are required to have their compliance certificates updated annually and kept on file and available for public inspection, the FCC only gave companies a few days to forward them to the FCC last year.

Question #6: What about the letters the FCC Enforcement Bureau recently sent to numerous telcos nationwide seeking Compliance Certificates for the past five years?

Answer: ITA has received reports that some Iowa telcos have received a letter or fax from the FCC Enforcement Bureau stating: “The FCC has initiated an inquiry to determine whether your company has failed to prepare and maintain an adequate CPNI compliance certificate.” The letter requests that you provide your compliance certificates and accompanying statements for the past five years.

The FCC letter also request the company provide a supporting affidavit or declaration under penalty of perjury, signed and dated by an officer of the company, with personal knowledge of the representations provided in your response verifying the truth and accuracy of the information.

Some telcos may not have completed a Compliance Certificate or an Accompanying Statement for some prior years. During a conversation this week, ITA asked the FCC if a company could prepare and sign a compliance certificate today stating that it did

comply with the CPNI rules during certain prior years. The FCC attorney advised that if a company were to prepare a certificate today that covers a prior time period, it would be evaluated as part of the FCC's total evaluation of your company's compliance. For example, telco XYZ may decide to prepare a certificate stating that it was in compliance with CPNI rules back in 2002 and date that certificate December 21, 2006. Of course, if your company did prepare certificates during 2001 to 2005, this would not apply. ITA also reminds telcos of the harsh fines that could result from any attempts to "backdate" compliance certificates.

ITA recommends that any telco who receives an FCC enforcement letter who doesn't know how to respond should contact legal counsel for advice on how to proceed.

The FCC has indicated that if you have already sent in information, you may supplement that information at any time.

The FCC has not provided any guidance on what actions it contemplates as a result of this latest enforcement sweep.

Questions for Carriers who will NOT use CPNI in their Marketing

Question #7: What types of marketing can a carrier conduct without using a customer's CPNI?

Answer: General marketing or promotions sent to your entire customer base are not considered to use to CPNI. Whenever you send a marketing piece to all of your customers, you have not used CPNI. Recall under Question #2 that you may market enhancements to services the customer already uses.

In addition, the FCC rules allow you to conduct a marketing campaign using the following types of generally available information without giving rise to the CPNI rules:

- General customer information including the customer's name, address and phone number.
- Aggregate information where the individual customer identities and characteristics have been removed or are not identifiable.
- Information available from directories
- Publicly available information (for example, targeting customers by zip codes or neighborhoods)

It is only when you use targeted marketing, or customer-specific marketing, that the CPNI rules apply. For example, if you send a special marketing campaign letter only to those customers that use your broadband, then most likely, you used CPNI to determine which customers were on that list.

Question #8: What rules or regulations do not apply if a carrier is NOT using CPNI?

Answer: If you do not plan to use any CPNI information for marketing (see Question #7), you do not need to comply with the following requirements:

1. The customer notification. Note: Most carriers sent the required initial notification when the CPNI rules were enacted in 1999.
2. The periodic opt-in or opt-out mechanisms.

Questions for Carriers that May Use CPNI in their Marketing Campaigns

Question #9: If a carrier plans to use CPNI, what do we do?

Answer. Before you make any solicitation for customer approval to use CPNI, a carrier must first provide a notification to the customer of the customer's right to restrict use of, disclosure of, and access to that customer's CPNI. The FCC says the notice should have "enough information to enable the customer to make an informed decision as to whether to permit a carrier to use, disclose, or permit access to, the customer's CPNI."

To meet this standard, the FCC requires several important features in your notice. Some of these include:

1. State that the customer has a right and the carrier has the duty under federal law to protect the confidentiality of CPNI
2. Explain what CPNI is, identify the specific entities that will receive the CPNI, describe the purposes for which CPNI will be used, and inform the customer of his or her right to disapprove those uses, and deny or withdraw access to CPNI at any time.
3. Clearly identify the steps a customer must take to grant or deny access to CPNI, and clearly state that a denial will not affect the provision of any services to which the customer subscribes.
4. State that any approval or denial of approval for the use of CPNI is valid until the customer affirmatively revokes or limits such approval or denial.
5. The notice must be easily understood, not misleading, clearly legible.

You must give this notice in close timeframe to any solicitation for customer approval. (one way to accomplish this is to send the notice along with the solicitation for approval). You must maintain records of the notification (whether oral, written or electronic) for at least one year.

Second, you must specifically explain and disclose how you will use that customer's information.

Third, you must obtain your customer's approval to use that information. You can request customer approval using one of three methods:

1. **"Opt-Out"** – You may send your customers a notice saying you will consider the customer to have given approval to use his customer information for marketing unless he tells you not to do so. You must wait at least 30 days after giving the notice before you may assume the customer has given approval to use, disclose or permit access to CPNI. If you provide the notifications by mail, the 30-day clock begins three days following the mailing date. Carriers using the opt-out provision must provide notices to their customers every two years. We have enclosed a sample "Opt-Out Policy" in Appendix D.

2. **“Opt-In”** – You send your customers a notice asking for express permission to her customer information for marketing. You must keep the response on file for at least one year
3. **“One-Time Use” of CPNI** -- You can use oral notice to obtain a limited, one-time use of CPNI for in-bound or out-bound customer telephone contacts for the duration of that call. That notice must include all of the disclosures listed in the first part of this answer, except that you need not remind the customers the following:
 - a. The fact that if the customer has opted out previously, then no action is needed to maintain the opt-out election;
 - b. If you do not plan to share or disclose the limited information which you are gathering to your affiliates or to third parties, then you need not tell the customer that you might do so.
 - c. You need not disclose the means by which a customer can deny or withdraw future access to CPNI so long as you explain that the scope of this request is limited to one-time use.
 - d. So long as you clearly communicate that the customer can deny access to his or her CPNI during this call, you need not disclose the precise steps the customer must take in order to grant or deny access to CPNI.

Question#10: Can a carrier use email for the Opt-In or Opt-Out Notices?

Answer: Carriers must obtain express, verifiable prior approval from consumers to send notices via email regarding CPNI. If you do so, you must allow customers to respond via email.

Question #11: Can a carrier use website notification?

Answer: No. Although your notices can be oral, written or electronic, it must be directed to each specific customer.

Question #12: What if a customer has more than one phone number – Does a carrier send one letter to each working number, or one to each distinct customer?

Answer: You are required to notify each “customer or entity.” If a customer or a business has multiple lines, just one notice is enough.

Question #13: If a carrier obtains a customer’s consent to use CPNI, can the carrier disclose the information to others?

Answer: If you obtain a customer’s “opt-out” or “opt-in” approval, you may then disclose that customer information, for the purpose of marketing communications-related

services, to your agents, affiliates, joint venture partners and independent contractors that provide communications-related services. You must also enter into agreements with those third parties to make sure they keep the customer information confidential. Any other release of CPNI must have specific “opt-in” approval.

Question #14: What if the customer requests to see their own CPNI or requests our company to supply that information to a third party?

Answer: If the customer makes an affirmative written request to disclose that information to a third party, the carrier must honor that request. 47 USC 222(c)(2)

Conclusion

Question #15: Where do I go for more information?

Answer: You can go to the FCC website for more information at <http://www.fcc.gov/eb/CPNI/> or at <http://www.fcc.gov/cgb/consumerfacts/phoneaboutyou.html>.

The ITA Website also has the FCC rules and a copy of this summary. We have also included some forms at the end of this summary.

